

**COPY**

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**MAY 18 2020**  
**KLICKITAT CO. CLERK**

SUPERIOR COURT OF WASHINGTON FOR KLIKITAT COUNTY

TOOTH ACRES, LLC, a Washington limited liability company; GENE SCHEEL, an individual,

20-2-00074-20  
NO.  
COMPLAINT

Plaintiffs,

VS.

HOODSTOCK RANCH, LLC, a Washington limited liability company; MARK GORDON HERON and MARY KATHLEEN HERON, husband and wife,

Defendants.

Plaintiff alleges:

1. Plaintiff Tooth Acres, LLC (“plaintiff”), is a limited liability company, organized and operating under the laws of the State of Washington. All required fees have been paid to date, and plaintiff is otherwise competent to bring and maintain this action.

2. Plaintiff Gene Scheel (“Scheel”) is an individual, and the principal of plaintiff. Scheel does business in the State of Washington.

3. Defendant HoodStock Ranch, LLC (“HoodStock”), is a limited liability company, organized and operating under the laws of the State of Washington, and doing business in Klickitat County, State of Washington.

1           4. Defendants Mark Gordon Heron and Mary Kathleen Heron ("Heron") are  
2 husband and wife, the principals of HoodStock, and residents of Hood River County, State of  
3 Oregon.

4           5. Jurisdiction and venue are proper in this court.

5           7. Plaintiff and HoodStock entered into a purchase and sale agreement on or about  
6 October 28, 2019, whereby plaintiff was seller and HoodStock was buyer, of certain real  
7 property located in Klickitat County, State of Washington. A true copy of the purchase and sale  
8 agreement is attached as Exhibit A.

9           8. The purchase price was \$1,500,000.00. HoodStock was to pay the entire price, in  
10 cash, at the closing of the transaction. On the date of the closing, however, defendants claimed  
11 they could only pay \$1,000,000.00, and insisted that plaintiff accept a \$500,000.00 promissory  
12 note for the remainder of the purchase price. Because plaintiff had purchased other property in  
13 reliance on HoodStock's representation that the full sales price would be paid at closing, plaintiff  
14 had no choice but to accept the promissory note and close.

15           9. Defendants therefore executed and delivered to plaintiff the promissory note  
16 attached as Exhibit B. The note obligated defendants to pay plaintiff the principal sum of  
17 \$500,000.00 within 90 days, plus interest at the rate of 2% per annum, plus an additional loan fee  
18 of \$6,000.00.

19           10. Even before payment was due, plaintiff declared defendants to be in default of  
20 their obligations under the promissory note. A true copy of plaintiff's notice of default, dated  
21 February 25, 2020, is attached as Exhibit C. With that notice, plaintiff accelerated all amounts  
22 owed per the terms of the promissory note and demanded payment on or before March 26, 2020.

23           11. As of February 25, 2020, the amount due under the note began to accrue interest  
24 at the default rate of 18% per annum.  
25

12. Defendants failed to pay all of any part of the sums owed under the promissory note by March 26, 2020. A late fee of 5% of the balance owed therefore also became due.

**FIRST CLAIM FOR RELIEF**

**(Breach of Promissory Note - Plaintiff)**

13. Plaintiff realleges the allegations contained paragraphs 1 through 12.

14. Defendants' failure to pay the sums owed under the promissory note constitutes a breach of the promissory note. As the result of defendants' breach of the promissory note, plaintiff has been damaged in the principal amount of \$506,000.00, plus prejudgment interest at 2% per annum from December 19, 2019, through February 24, 2020, in the amount of \$3,521.20, plus prejudgment interest at 18% per annum from February 25, 2020, to the date of judgment in the amount of \$249.53 per day, plus a contractual late fee of \$25,000.00.

15. Pursuant to the terms of the promissory note, plaintiff is entitled to recover reasonable attorney fees and expenses.

**SECOND CLAIM FOR RELIEF**

**(Breach of Promissory Note – Scheel)**

16. Plaintiffs reallege the allegations contained in paragraphs 1 through 5.

17. On or about December 18, 2019, defendant HoodStock executed a second promissory note in favor of Scheel, a true copy of which is attached as Exhibit D.

18. The note was in the principal amount of \$77,250.00, and was payable on or before April 20, 2020.

19. HoodStock has failed and refused to pay any part of the promissory note. The note is therefore in default.

20. HoodStock's failure to pay the sums owed under the promissory note constitutes a breach of the promissory note. As the result of HoodStock's breach of the promissory note,

1 Scheel has been damaged in the principal amount of \$77,250.00, plus prejudgment interest at the  
2 statutory rate of 12% per annum from December 18, 2019 to the date of judgment.

3 **THIRD CLAIM FOR RELIEF**

4 **(Fraud)**

5 21. Plaintiffs realleges the allegations contained in paragraphs 1 through 12.

6 22. At the time HoodStock entered into the purchase and sale agreement, defendants  
7 had no intention of bringing \$1,500,000.00 in cash to the closing of the purchase and sale  
8 transaction.

9 23. Similarly, defendants never had any intention of paying plaintiff the sums called  
10 for in the first promissory note. Instead, defendants intended that HoodStock would acquire  
11 possession of and title to the subject real property by paying plaintiff only \$1,000,000.00.

12 24. HoodStock also had no intention to pay Scheel the sum called for in the second  
13 promissory note. Instead, HoodStock intended that HoodStock would acquire possession of and  
14 title to the subject personal property without paying Scheel anything.

15 25. Plaintiff actually and reasonably relied on HoodStock's agreements to perform the  
16 purchase and sale in accordance with its terms when it entered into the agreement. Plaintiff also  
17 actually and reasonably relied on defendants' agreement to pay the promissory note in  
18 accordance with its terms when it agreed to accept the promissory note and close. Scheel also  
19 actually and reasonably relied on HoodStock's agreement to pay the second promissory note in  
20 accordance with its terms when he agreed to accept the promissory note and transfer possession  
21 of the personal property.

22 26. Defendants knew that plaintiffs were relying on their agreements and  
23 representations when HoodStock entered into the purchase and sale agreement, when defendants  
24 executed and delivered the promissory note, and when HoodStock executed and delivered the  
25

1 second promissory note. Defendants intended that plaintiffs so rely, and intended to defraud  
2 plaintiffs out of their property without paying the agreed price.

3 27. As the result of defendants' fraudulent acts, plaintiff has been damaged in the  
4 principal amount of \$506,000.00, plus prejudgment interest at 2% per annum from December 19,  
5 2019, through February 24, 2020 in the amount of \$3,521.20, plus prejudgment interest at 18%  
6 per annum from February 25, 2020, to the date of judgment in the amount of \$249.53 per day,  
7 plus a contractual late fee of \$25,000.00.

8 28. As the result of HoodStock's breach of the second promissory note, Scheel has  
9 been damaged in the principal amount of \$77,250.00, plus prejudgment interest at the statutory  
10 rate of 12% per annum from December 18, 2019 to the date of judgment.

11 WHEREFORE, plaintiffs pray for the following relief:

12 1. On its first or third claim for relief, Tooth Acres, LLC prays for a money  
13 judgment against defendants, jointly and severally, in the principal amount of \$506,000.00, plus  
14 prejudgment interest at 2% per annum from December 19, 2019, through February 24, 2020, in  
15 the amount of \$3,521.20, plus prejudgment interest at 18% per annum from February 25, 2020,  
16 to the date of judgment in the amount of \$249.53 per day, plus a contractual late fee of  
17 \$25,000.00, plus an award of reasonable attorney fees per the terms of the purchase and sale  
18 agreement and the promissory note;

19 2. On his second or third claim for relief, Scheel prays for a money judgment against  
20 defendant HoodStock in the principal amount of \$77,250.00, plus prejudgment interest at the  
21 statutory rate of 12% per annum from December 18, 2019 to the date of judgment

22 3. For their costs and expenses incurred herein; and

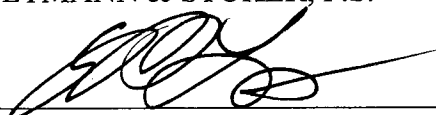
23 4. For such other and further relief as the Court may deem just and proper.

24 //

25 //

1 DATED this 15 day of May, 2020.

2 HEURLIN, POTTER, JAHN, LEATHAM,  
3 HOLTMANN & STOKER, P.S.

4   
5 \_\_\_\_\_  
6 Stephen G. Leatham, WSBA #15572  
7 Of Attorneys for Plaintiffs  
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## COMMERCIAL ASSOCIATION OF REALTORS OREGON/SW WASHINGTON

## PURCHASE AND SALE AGREEMENT AND RECEIPT FOR EARNEST MONEY

(Oregon-Commercial Form)

Dated: 10-28-2019BETWEEN: TOOTH ACRES, LLC ("Seller")Address: 11818 SE MILL PLAIN BLVD SUITE 106  
VANCOUVER, WA 98684AND: HOODSTOCK RANCH, LLC ("Buyer")Address: 176 E. JENNETT BLVD PO BOX 2290  
WHITE SALMON, WA 98672

Buyer agrees to buy and acquire and Seller agrees to sell, assign and convey on the following terms: (i) the real property and all improvements thereon commonly known as

267 86 ROAD TROUT LAKE, WA 98650  
PARCEL # and located at  
LEGAL DESCRIPTION ATTACHED in the

City of TROUT LAKE, County of RUCKELT

legally described on Exhibit A attached hereto (the "Property"). If no legal description is attached, Buyer and Seller will attach a legal description upon receipt and reasonable approval by both parties of the Preliminary Commitment or, if applicable, the Survey, and if applicable (ii) all of Seller's right, title and interest in and to certain lease(s) by which the Property is demised as described on Exhibit B attached hereto. As partial consideration for the assignment of the Lease(s) to Buyer, at the Closing (as defined in Section 7 hereof) Buyer shall assume all of the obligations of the Lessor under the Lease(s) which first accrue on or after the Closing Date (as defined in said Section 7). The parties shall accomplish such assignment and assumption by executing and delivering to each other through Escrow an Assignment of Lessor's Interest Under Lease substantially in the form of Exhibit C attached hereto (the "Assignment"). The occupancy of the Property by said Lessee(s) are hereinafter sometimes referred to as the "Tenancies".

1 Purchase Price. 1,500,000 -  
ONE MILLION FIVE HUNDRED & NO/100  
dollars (\$ 1,500,000 -) (the Purchase Price) payable as follows:  
ALL CASH & CLOSING to Seller NO CARRY BACK

1.1 Earnest Money Deposit Upon execution of this Agreement, Buyer shall deliver to the Escrow Holder as defined herein, for the account of the Buyer \$ 10,000 as earnest money (the "Earnest Money") in the form of cash or check or promissory note (the "Note"). If the Earnest Money is in the form of a check being held undeposited by the Listing



Selling Firm, it shall be deposited no later than 5 PM Pacific Time three days after execution of the Agreement by Buyer and Seller in the \_\_\_ Listing \_\_\_ Selling Firm's Clients' Trust Account ☒ to the Escrow. If the Earnest Money is in the form of the Note, it shall be due and payable no later than 5 PM Pacific Time one day after ☒ execution of the Agreement by Buyer and Seller or \_\_\_ satisfaction or waiver by Buyer of the conditions to Buyer's obligation to purchase the Property set forth in this Agreement or \_\_\_ at Closing or \_\_\_ Other.

If the Note or check is not redeemed and paid in full when due, then (i) the Note or check shall be delivered and endorsed to Seller (if not already in Seller's possession), (ii) Seller may collect the Earnest Money from Buyer, either pursuant to an action on the Note or an action on this Agreement and (iii) this Agreement shall be of no further force or effect. The purchase and sale of the Property shall be accomplished through an escrow (the "Escrow") which Seller has established or will establish with KLICKITAT COUNTRY TITLE (the Title Company") and the Earnest Money shall be deposited with \_\_\_ Title Company or \_\_\_ Other. The Earnest Money shall be applied to the payment of the purchase price for the Property at Closing. Any interest earned on the Earnest Money shall be considered to be part of the Earnest Money. The Earnest Money shall be returned to the Buyer in the event any condition to Buyer's obligation to purchase the Property shall fail to be satisfied or waived through no fault of Buyer.

2 Conditions to Purchase Buyer's obligation to purchase the Property is conditioned on the following: none and/or APPROVAL TO MEET BUYER'S SATISFACTION

SATISFACTORY TITLE REPORT

and/or \_\_\_ Buyer's approval of the results of its Property inspection described in Section 3 below. If Buyer has not given written waiver of these conditions, or stated in writing that these conditions have been satisfied, by written notice given to Seller within 30 days after the Execution Date (defined below), the Agreement shall be deemed automatically terminated, the Earnest Money shall be promptly returned to Buyer, and thereafter, except as specifically provided to the contrary herein, neither party shall have any further right or remedy hereunder.

3 Property Inspection Seller shall permit Buyer and its agents, at Buyer's sole expense and risk, to enter the Property, at reasonable times after reasonable prior notice to Seller and after prior notice to the tenants of the Property as required by the tenant's leases, to conduct any and all inspections, tests, and surveys concerning the structural condition of the improvements, all mechanical, electrical and plumbing systems, hazardous materials, pest infestation, soils conditions, wetlands, American with Disabilities Act compliance, and all other matters affecting the suitability of the Property for Buyer's intended use and/or otherwise reasonable related to the purchase of the Property, including the economic feasibility of such purchase. Buyer shall indemnify, hold harmless, and defend Seller from all liens, costs, and expenses, including reasonable attorneys' fees and experts' fees, arising from or relating to Buyer's entry on and inspection of the Property. This agreement to indemnify, hold harmless, and defend Seller shall survive closing or any termination of this Agreement.



4 Seller's Documents. Within 5 days after the Execution Date, Seller shall deliver to Buyer, at Buyer's address shown below, legible and complete copies of the following documents and other items relating to the ownership, operation, and maintenance of the Property, to the extent now in existence and to the extent such items are within Seller's possession or control: FIREST 16 REPORT, WELL REPORT

5 Title Insurance. Within 5 days after the Execution Date, Seller shall deliver to Buyer a preliminary title report from the Title Company (the "Preliminary Commitment"), together with complete and legible copies of all documents shown therein as exceptions to title, showing the status of Seller's title to the Property. Buyer shall have 5 days after receipt of a copy of the Preliminary Commitment within which to give notice in writing to Seller of any objection to such title or to any liens or encumbrances affecting the Property. Within 5 days after the date of such notice from Buyer, Seller shall give Buyer written notice of whether it is willing and able to remove the objected-to exceptions. Within 5 days after the date of such notice from Seller, Buyer shall elect whether to (i) purchase the Property subject to those objected-to exceptions which Seller is not willing or able to remove or (ii) terminate this Agreement. On or before the Closing Date (defined below), Seller shall remove all exceptions to which Buyer objects and which Seller agrees Seller is willing and able to remove. All remaining exceptions set forth in the Preliminary Commitment and agreed to by Buyer shall be deemed "Permitted Exceptions". The title insurance policy to be delivered by Seller to Buyer at closing shall contain no exceptions other than the Permitted Exceptions and the usual preprinted exceptions contained in an owner's standard form title insurance policy.

6 Default Remedies. If the conditions, if any, to Buyer's obligation to close this transaction are satisfied or waived by Buyer and Buyer nevertheless fails, through no fault of Seller, to close the purchase of the Property, Seller's sole remedy shall be to retain the Earnest Money paid by Buyer. In the event Seller fails, through no fault of Buyer, to close the sale of the property, Buyer shall be entitled to pursue any remedies available at law or in equity, including without limitation, the remedy of specific performance.

7 Closing of Sale The sale shall be closed on or before DEC 15, 2019 or        days after Execution Date (the "Closing Date") in escrow at the Title Company. The sale shall be deemed "closed" when the document conveying title to the Property is recorded and the Purchase Price (increased or decreased, as the case may be, by the net amount of credits and debits to Seller's account at Closing made by the Escrow Holder pursuant to the terms of this Agreement) is disbursed to Seller. At Closing, Buyer and Seller shall deposit with the Title Company all documents and funds required to close the transaction in accordance with the terms of this Agreement. At Closing, Seller shall deliver a certification in a form approved by Buyer that Seller is not a "foreign person" as such term is defined in the Internal Revenue Code and the Treasury Regulations promulgated under the Internal Revenue Code. If Seller is a foreign person and this transaction is not otherwise exempt from FIRPTA regulation, the Title Company shall be instructed by the parties to withhold and pay the amount required by law to the Internal Revenue Service. At Closing, Seller shall convey fee simple title to the Property to Buyer by ☒ statutory warranty deed or        (the "Deed"). If this Agreement provides for the conveyance by Seller of a vendee's interest in the Property by a contract of sale, Seller shall deposit with the Title Company (or other mutually acceptable escrow) the executed and acknowledged Deed, together

1 with written instructions to deliver such deed to Buyer upon payment in full of the purchase  
 2 price. At Closing, Seller shall pay for and deliver to Buyer a standard form owner's policy of title  
 3 insurance (the "Policy") in the amount of the Purchase Price insuring fee simple title to the Property in  
 4 Buyer subject only to the Permitted Exceptions and the standard preprinted exceptions contained in a  
 5 standard form policy.

6           8 Closing Costs: Prorates. Seller shall pay the premium for the Policy. Seller and Buyer  
 7 shall each pay one-half of the escrow fees charged by the Title Company, any excise tax, and any  
 8 transfer tax. Real Property taxes for the tax year in which the transaction is closed, assessments (if a  
 9 Permitted Exception), personal property taxes, rents on existing tenancies paid for the month of Closing,  
 10 interest on assumed obligations, and utilities shall be prorated as of the Closing Date. Prepaid rents,  
 11 security deposits, and other unearned refundable deposits regarding the Tenancies shall be assigned and  
 12 delivered to Buyer at Closing, ☒ Seller ☒ Buyer N/A shall be responsible for payment of taxes  
 13 interest, and penalties, if any, upon removal of the Property from any special assessment or program.

14           9 Possession. Buyer shall be entitled to exclusive possession of the Property, subject to the  
 15 Tenancies existing as of the Closing Date, ☒ on the Closing Date or       

17           10 Condition of Property. Seller represents that, to the best of Seller's knowledge without  
 18 specific inquiry, Seller has received no written notices of violation of any laws, codes, rules, or  
 19 regulations applicable to the Property ("Laws"), and Seller is not aware of any such violations or any  
 20 concealed material defects in the Property which cost more than \$ 500 to repair or correct. Risk  
 21 of loss or damage to the Property shall be Seller's until Closing and Buyer's at and after Closing. No  
 22 agent of Seller nor any agent of Buyer has made any representations regarding the Property. The real  
 23 estate licensees named in this Agreement have made no representation to any party regarding the  
 24 condition of the Property, the operations on or income from the Property, the Tenancies, or whether the  
 25 Property or the use thereof complies with Laws. Except for Seller's representations set forth in this  
 26 Section 11, Buyer shall acquire the Property "AS IS" with all faults and Buyer shall rely on the results of  
 27 its own inspection and investigation in Buyer's acquisition of the Property. It shall be a condition of  
 28 Buyer's obligation to close, and of Seller's right to retain the Earnest Money as of Closing that all of the  
 29 Seller's representations and warranties stated in this Agreement are materially true and correct on the  
 30 Closing Date. Seller's representations and warranties stated in this Agreement shall survive Closing for  
 31 one (1) year.

32           11 Personal Property. This sale includes the following personal property:         
 33 SEE ADDENDUM or        the personal  
 34 property located on and used in commission with the Property and owned by Seller which Seller shall  
 35 itemize in a schedule. Seller shall deliver to Buyer such schedule within        days after the  
 36 Execution Date. Seller shall convey all personal property owned by Seller on or in the Property to Buyer  
 37 by executing and delivering to Buyer through Escrow a Bill of Sale substantially in the form of  
 38 Exhibit D attached hereto (the "Bill of Sale").

39           12 Agency Disclosure. The following agency relationship(s) in this transaction is (are)  
 40 hereby consented to and acknowledged:

(a) \_\_\_\_\_ (selling real estate licensee) is the agent of  
 (check one) ☐ Buyer exclusively as an agent of Buyer, ☐ Seller exclusively as an agent of Seller, ☐  
 both Seller and Buyer as set out in the in-company agreement.

(b) \_\_\_\_\_ (listing agent if not the same as selling agent) is  
 the agent of (check one): ☐ Seller exclusively as Seller's agent, ☐ both Seller and Buyer as set out in  
 the in-company agreement.

(c) \_\_\_\_\_ (real estate licensee) both Seller and Buyer in a  
 limited dual agency relationship pursuant to separate agreement.

#### ACKNOWLEDGED

Buyer:	_____	Dated:	_____	Designated Broker(s) Initials
Buyer:	_____	Dated:	_____	
Seller:	_____	Dated:	_____	
Seller:	_____	Dated:	_____	

13 Notices. Unless otherwise specified, any notice required or permitted in, or related to, this Agreement must be in writing and signed by the party to be bound. Any notice or payment will be deemed given when personally delivered or delivered by facsimile transmission (with electronic confirmation of delivery), or will be deemed given on the day following delivery of the notice by reputable overnight courier or three (3) days after mailing in the U.S. mails, postage prepaid, by the applicable party to the address of the other party shown in this Agreement, unless that day is a Saturday, Sunday, or legal holiday, in which event it will be deemed delivered on the next following business day. If the deadline under this Agreement for delivery of a notice or payment is a Saturday, Sunday, or legal holiday, such last day will be deemed extended to the next following business day.

14 Assignment. Buyer ☒ may assign ☐ may not assign ☐ may assign, if the assignee is an entity owned and controlled by Buyer (may not assign, if no box is checked) this Agreement or Buyer's rights under this Agreement without Seller's prior written consent. If Seller's consent is required for assignment, such consent may be withheld in Seller's sole discretion.

15 Attorney's Fees. In the event a suit, action, arbitration, or other proceeding of any nature whatsoever, including without limitation any proceeding under the U.S. Bankruptcy Code, is instituted, or the services of any attorney are retained, to interpret or enforce any provision of this Agreement or with respect to any dispute relating to this Agreement, the prevailing party shall be entitled to recover from the losing party its attorneys' paralegals', accountants', and other experts' fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith. In the event of suit, action, arbitration, or other proceeding, the amount thereof shall be determined by the judge or arbitrator, shall include fees and expenses incurred on any appeal or review, and shall be in addition to all other amounts provided by law.

16 Statutory Land Use Disclaimer. THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, WHICH, IN FARM AND FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND WHICH LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES. BEFORE SIGNING OR ACCEPTING



1 THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK  
 2 WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY  
 3 APPROVED USES AND THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES.

4 17 Miscellaneous. Time is of the essence of this Agreement. The facsimile transmission of  
 5 any signed document including this Agreement shall be the same as delivery of an original. At the  
 6 request of either party, the party delivering a document by facsimile will confirm facsimile transmission  
 7 by signing and delivering a duplicate original document. This Agreement may be executed in two or  
 8 more counterparts, each of which shall constitute an original and all of which together shall constitute  
 9 one and the same Agreement. This Agreement contains the entire agreement and understanding of the  
 10 parties with respect to the subject matter of this Agreement and supersedes all prior and  
 11 contemporaneous agreements between them with respect thereto. Without limiting the provisions of  
 12 Section 15 of this Agreement, this Agreement shall be binding upon and shall inure to the benefit of the  
 13 parties and their respective successors and assigns. The person signing this Agreement on behalf of  
 14 Buyer and the person signing this Agreement on behalf of Seller each represents, covenants and warrants  
 15 that such person has full right and authority to enter into this Agreement and to bind the party for whom  
 16 such person signs this Agreement to the terms and provisions of this Agreement. This Agreement shall  
 17 not be recorded unless the parties otherwise agree.

18 18 Addendums: Exhibits. The following named addendums and exhibits are attached to this  
 19 Agreement and incorporated within this Agreement: none or ADDENDUM  
 20

21 19 Time for Acceptance. Seller has until 5:00 p.m. Pacific Time on  
 22 10-30-2019 to accept this offer. Acceptance is not effective until a copy of this  
 23 Agreement which has been signed and dated by Seller is actually received by Buyer. If this offer is not  
 24 so accepted, it shall expire and the Earnest Money shall be promptly refunded to Buyer and thereafter  
 25 neither party shall have any further right or remedy against the other.

26 20 Seller's Acceptance and Brokerage Agreement. Seller agrees to sell the Property on the  
 27 terms and conditions in this Agreement and further agrees to pay a commission in the total amount  
 28 computed in accordance with the listing agreement or other commission agreement dated  
 29 between Seller and \_\_\_\_\_ If there  
 30 is no written listing agreement or other commission agreement, Seller agrees to pay a  
 31 commission of \_\_\_\_\_ percent ( \_\_\_\_\_ %) of the purchase price  
 32 or \$ \_\_\_\_\_. Seller and \_\_\_\_\_ agree that  
 33 the commission is deemed earned as of the date this Agreement is signed by Seller and Buyer. Unless  
 34 otherwise provided in a separate written agreement, the real estate commission is due on the Closing  
 35 Date or upon Seller's breach of this Agreement, whichever occurs first. If the Earnest Money is forfeited  
 36 and retained by Seller in accordance with this Agreement, in addition to any other rights the Listing  
 37 Agent may have, the Listing Agent shall be entitled up to fifty percent (50%) of the Earnest Money, not  
 38 to exceed any agreed commission, and Seller hereby assigns to the listing agent such amount.

39 21 Execution Date. The Execution Date is the later of the two dates shown beneath the  
 40 parties' signatures below.

41 22 Governing Law. This agreement is made and executed under, and in all respects shall be  
 42 governed and construed by the laws of the State of Oregon.

1 CONSULT YOUR ATTORNEY. THIS DOCUMENT HAS BEEN PREPARED FOR SUBMISSION  
 2 TO YOUR ATTORNEY FOR REVIEW AND APPROVAL PRIOR TO SIGNING. NO  
 3 REPRESENTATION OR RECOMMENDATION IS MADE BY THE REAL ESTATE  
 4 LICENSEES INVOLVED WITH THIS DOCUMENT AS TO THE LEGAL  
 5 SUFFICIENCY OR TAX CONSEQUENCES OF THIS DOCUMENT.  
 6

7 THIS FORM SHOULD NOT BE MODIFIED WITHOUT SHOWING SUCH MODIFICATIONS BY  
 8 REDLINING, INSERTION MARKS, OR ADDENDA.

9 Buyer: Hood Creek Ranch, LLC

Seller: \_\_\_\_\_

11 By Mary Katherine Ham

By \_\_\_\_\_

12 Title Managing Member

Title \_\_\_\_\_

13 Execution Date 10/28/2019

Execution Date \_\_\_\_\_

14 Time of Execution 2:00

Time of Execution \_\_\_\_\_

15 Home Phone (541) 806-3900

Home Phone \_\_\_\_\_

16 Office Phone \_\_\_\_\_

Office Phone \_\_\_\_\_

17 Address \_\_\_\_\_

Address \_\_\_\_\_

20 Fax No. \_\_\_\_\_

Fax No. \_\_\_\_\_

22 E-mail KATHY.PREMIEREPROPERTIES  
@GMAIL.COM

E-mail \_\_\_\_\_

26 Broker's approval \_\_\_\_\_

## ADDENDUM TO REAL ESTATE SALE AGREEMENT

This is an Addendum to: ☒ Real Estate Sale Agreement ☐ Seller's Counter Offer ☐ Buyer's Counter Offer  
 Re: Real Estate Sale Agreement No. 10282019 Dated 10-28-19 Addendum No. "A"  
 Buyer: HOODSTOCK RANCH, LLC  
 Seller: TOOTHACRES, LLC  
 The real property described as: 247 86 ROAD TROUT LAKE, WA 98150

SELLER AND BUYER HEREBY AGREE THE FOLLOWING SHALL BE A PART OF THE REAL ESTATE SALE AGREEMENT REFERENCED ABOVE.

BUYER & SELLER AGREE TO DETERMINE ANY PERSONAL PROPERTY TO BE INCLUDED IN SALE OUTSIDE OF ESCROW WITH EXCEPTION OF GRADER, WHEEL RIG, ROLLER AT NO ADDITIONAL CHARGE.

BUYER & SELLER AGREE TO EARLIER CLOSING DATE IF APPRAISAL IS COMPLETED PRIOR TO CLOSING DATE.

SELLER RECOGNIZES ONE OF BUYER'S MANAGING MEMBERS IS A LICENSED PRINCIPAL REAL ESTATE BROKER, PURCHASING FOR OWN PURPOSE - NO REAL ESTATE FEES IN TRANSACTION.

Buyer Signature	<u>[Signature]</u>	Date	<u>10/28/2019</u>	A.M.	<u>2:00</u>	P.M.	37
Buyer Signature	<u>[Signature]</u>	Date		A.M.		P.M.	38
Seller Signature	<u>[Signature]</u>	Date		A.M.		P.M.	39
Seller Signature		Date		A.M.		P.M.	40
Listing Licensee		Selling Licensee					41
Listing Firm Broker Initials/Date		Selling Firm Broker Initials/Date					42

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Exhibit A  
 Page 8 of 8 : FROM



**PROMISSORY NOTE**

\$500 000.00

**December 19, 2019**

Date


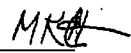
Goldendale WA

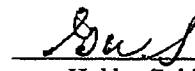
City, State

FOR VALUE RECEIVED, HoodStock Ranch, LLC, a Washington Limited Liability Company; and Mark Gordon Heron and Mary Kathleen Heron, husband and wife, together hereinafter "Maker" promises to pay to Tooth Acres, LLC, a Washington Limited Liability Company hereinafter "Holder" or order at 11818 SE Mill Plain Blvd #106 Vancouver WA 98684 or other such place as may be designated by the Holder from time to time, the principal sum of Five Hundred Thousand and no/100 Dollars (\$500,000.00), with interest thereon from 19th day of December, 2019,


on the unpaid principal at the rate of Two percent (2.0%) per annum as follows:

1. **INSTALLMENT PAYMENTS:** Maker shall pay no installment payments.
2. **DUE DATE:** The entire balance of this Note together with any and all interest accrued thereon shall be due and payable in full no later than 90 days from closing.
3. **DEFAULT INTEREST:** After maturity, or failure to make any payment, any unpaid principal shall accrue interest at the rate of 18% per annum OR the maximum rate allowed by law, whichever is less, during such period of Maker's default under this Note.
4. **ALLOCATION OF PAYMENTS:** Each payment shall be credited first to any late charge due, second to interest and the remainder to principal.
5. **PREPAYMENT:** Maker may prepay all or part of the balance owed under this Note at any time without penalty.
6. **CURRENCY:** All principal and interest payments shall be made in lawful money of the United States.
7. **LATE CHARGE:** If Holder receives any portion of payment more than fifteen (15) days after its due date, then a late payment charge of five (5) percent shall be added to the scheduled payment.
8. **DUE ON SALE:** (OPTIONAL-Not applicable unless initialed by Holder and Maker to this Note) If this Note is secured by a Deed of Trust or any other instrument securing repayment of this Note, the property described in such security instruments may not be sold or transferred without the Holder's consent. Upon breach of this provision, Holder may declare all sums due under this Note immediately due and payable, unless prohibited by applicable law.

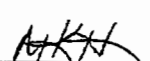
  
Maker (Initials)  Maker (Initials)

  
Holder (Initials)

9. **ACCELERATION:** If Maker fails to make any payment owed under this Note, or if Maker defaults under any Deed of Trust or any other instruments securing repayment of this Note, and such default is not cured within thirty (30) days after written notice of such default, then Holder may, at its option, declare all outstanding sums owed on this Note to be immediately due and payable, in addition to any other rights or remedies that Holder may have under the Deed of Trust or other instruments securing repayment of this Note.
10. **ATTORNEYS' FEES AND COSTS:** Maker shall pay all costs incurred by Holder in collecting sums due under this Note after a default, including reasonable attorneys' fees, whether or not suit is brought including but not limited to those incurred in mediation, arbitration, litigation, bankruptcy and appeal. If Maker or Holder sues to enforce this Note or obtain a declaration of its rights hereunder, the prevailing party in any such proceeding shall be entitled to recover its reasonable attorneys' fees and costs incurred in the proceedings including but not limited to those incurred in mediation, arbitration, litigation, bankruptcy and appeal.
11. **WAIVER OF PRESENTMENTS:** Maker waives presentment for payment, notice of dishonor, protest and notice of protest.
12. **NON-WAIVER:** No failure or delay by Holder in exercising Holder's rights under this Note shall be a waiver of such rights.
13. **SEVERABILITY:** If any clause or any other portion of this Note shall be determined to be void or unenforceable for any reason, such determination shall not affect the validity or enforceability of any other clause or portion of this Note, all of which shall remain in full force and effect.
14. **INTEGRATION:** There are no verbal or other agreements which modify or affect the terms of this Note. This Note may not be modified or amended except by written agreement signed by Maker and Holder.
15. **CONFLICTING TERMS:** In the event of any conflict between the terms of this Note and the terms of any Deed of Trust or other instruments securing payment of this Note, the terms of this Note shall prevail.
16. **EXECUTION:** Each Maker executes this Note as a principal and not as a surety. If there is more than one Maker, each such Maker shall be jointly and severally liable under this Note.
17. **COMMERCIAL PROPERTY:** (OPTIONAL-Not applicable unless initialed by Holder and Maker to this Note) Maker represents and warrants to Holder that the sums represented by this Note are being used for business, investment or commercial purposes, and not for personal, family or household purposes.



Maker (Initials)



Maker (Initials)



Holder (Initials)

ORAL AGREEMENTS: ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, TO EXTEND CREDIT, OR TO FOREBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

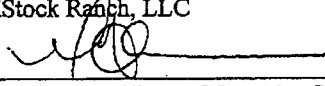
18. **DEFINITIONS:** The word Maker shall be construed interchangeably with the words Borrower or Payer and the word Holder shall be construed interchangeably with the words Lender or Payee. In this Note, singular and plural words shall be construed interchangeably as may be appropriate in the context and circumstances to which such words apply.
19. **ADDITIONAL TERMS AND CONDITIONS:** As set forth on the attached "Exhibit A" which is

incorporated by this reference.

**20. THIS NOTE IS SECURED BY 2<sup>nd</sup> POSITION DEED OF TRUST OF EVEN DATE.**

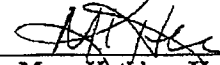
Maker (signatures)

HoodStock Ranch, LLC

  
By Mark Gordon Heron. Managing Member

  
Mark Gordon Heron, personally

HoodStock Ranch, LLC

  
By Mary Kathleen Heron. Managing Member

  
Mary Kathleen Heron, personally

Maker's address for all notices given by Holder under this Note: 1749 22<sup>nd</sup> Street, Hood River. OR 97031

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DO NOT DESTROY THIS NOTE

WHEN PAID this original Note together with the Deed of Trust securing the same, must be surrendered to the Trustee for cancellation and retention before any reconveyance can be processed.

EXHIBIT A TO PROMISSORY NOTE


In addition to the principal and interest balloon payment due no later than 90 days from the closing date, Maker also agrees to pay to Holder an additional fee of Six Thousand and no/00 dollars. This additional fee shall have the same due date as the aforementioned balloon payment


HoodStock Ranch, LLC

  
By Mark Gordon Heron, Managing Member

  
Mark Gordon Heron, personally

HoodStock Ranch, LLC

  
By Mary Kathleen Heron, Managing Member

  
Mary Kathleen Heron, personally



Two Centerpoints Dr., 6<sup>th</sup> Floor  
Lake Oswego, OR 97035  
Tel. (503) 598-7070  
Fax (503) 598-7373  
www.jordanramis.com

Thomas B. Eriksen  
Admitted in Oregon and Washington  
tb.eriksen@jordanramis.com  
OR Direct Dial: (503) 598-5590  
WA Direct Dial: (360) 567-3903

February 25, 2020

VIA EMAIL, FIRST CLASS MAIL, AND  
CERTIFIED MAIL RETURN RECEIPT REQUESTED

Hoodstock Ranch LLC  
178 E. Jewett Blvd  
White Salmon WA 98672

Mark G. Heron  
Mary Kathleen Heron  
1749 22nd Street  
Hood River OR 97031

Re: Tooth Acres, LLC/Hoodstock Ranch LLC – NOTICE OF DEFAULT  
December 19, 2019 Second Position Deed of Trust  
Our File No. 46918-73583

Dear Mr. and Mrs. Heron:

This office represents Tooth Acres, LLC in connection with that certain Promissory Note dated December 19, 2019 wherein Hoodstock Ranch LLC and Mark Gordon Heron and Mary Kathleen Heron, husband and wife, are the makers and Tooth Acres, LLC is the holder and that certain Second Position Deed of Trust dated December 19, 2019 wherein Hoodstock Ranch LLC is the grantor and Tooth Acres, LLC is the beneficiary.

Notice is hereby given that you are in default under the terms of the Second Position Deed of Trust due to your failure to provide for the beneficiary to be the first loss payee under the fire insurance policy covering the property as required by Section 3 of the Second Position Deed of Trust.

Pursuant to Section 9 of the Promissory Note, all amounts due under the Promissory Note, including principal and accrued interest, are hereby accelerated and are now due and payable 30 days from the date of this letter.

Failure to pay the full amount due under the terms of the Promissory Note on or before March 26, 2020 will result in a foreclosure and collection action being filed against you.

This is an attempt to collect a debt. Any information obtained will be used for that purpose.

Very Truly Yours,

JORDAN RAMIS PC

A handwritten signature in black ink, appearing to read 'TBE', written over the printed name of Thomas B. Eriksen.

Thomas B. Eriksen

cc: Tooth Acres, LLC

46918-73583 4826-7252-6518.1

Lake Oswego, Oregon | Vancouver, Washington | Bend, Oregon

## WASHINGTON PROMISSORY NOTE

Pursuant to WA ST 19.52.020

FOR VALUE RECEIVED, HOODSTOCK RANCH LLC ("Borrower") promises to pay to GENE SCHILL ("Lender") SEVENTY SEVEN THOUSAND TWO HUNDRED FIFTY Dollars (\$ 77,250) in principal, plus interest at a rate of        % annually on the unpaid balance as set forth herein.

1. **PAYMENT TERMS** (Choose one):

- ☐ - Borrower shall make        payments in the amount of        Dollars (\$       ) per (month/year) on       , 20      .
- ☒ - Borrower shall make 1 payments in the amount of 77,250 Dollars (\$ 77,250) per (month/year) and a final payment in the amount of        Dollars (\$       ) on       , 20      .
- ☒ - Borrower shall pay a lump sum on April 20, 2020.

2. **TERM:** The term of this Loan is from 12-18-2019 to 1-20-2020

3. **PREPAYMENT:** Borrower may prepay the loan without any penalty.

4. **PAYMENT APPLICATION:** All payments shall first be applied to interest and then to principal.

5. **SECURITY** (Choose one):

- ☐ - This note shall be secured by a (mortgage/deed of trust) on Borrower's premises located at        until the note is paid in full
- ☒ - This note shall be secured by a UCC-1 Financing statement and security agreement giving Lender a secured interest in Borrower's equipment, fixtures, inventory and accounts receivable of        (Borrower's business) until the note is paid in full.

☐ - This note is unsecured.

SELLER TO RECORD AS COLLATERAL AGAINST PROPERTY LOCATED AT 267 86 RD, TROUT LAKE, WA 98650

6. **ACCELERATION:** Lender may require Borrower to pay the entire balance of the unpaid principal and accrued interest immediately if the Borrower is more than        days late in making a payment.

SEE ATTACHED DETAILED LIST OF EQUIPMENT

Nothing herein shall be considered legal advice. You are encouraged to seek legal advice from an attorney licensed to practice in your jurisdiction before using this form.

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[Signature], Managing Member  
Hoodstock Ranch, LLC

12-18-2019



LOADER	40,000	11
M. TRAILS & V-PLow		12
		13
SUPPLIES	1,000	14
		15
OIL TANK	100	16
		17
EXCAVATOR	16,000	18
		19
STEEL BEAMS & GATES	2,000	20
		21
MISCELLANEOUS FURNITURE	2,000	22
		23
MINI TRUCK	2,000	24
		25
FISH	500	26
		27
EXCISE TAX	13,350	28
		29
TOTAL	\$ 77,250	30
		31
		32
		33
		34
		35
		36

Buyer Signature	<u>[Signature]</u> <u>Handbook Ranch, LLC</u>	Date	<u>12/18/2019</u> <u>AM</u> <u>530</u> <u>P.M.</u>	37
Buyer Signature	<u>[Signature]</u> <u>Maximizing Member, LLC</u>	Date	____ <u>AM</u> ____ <u>P.M.</u>	38
Seller Signature	_____	Date	____ <u>AM</u> ____ <u>P.M.</u>	39
Seller Signature	_____	Date	____ <u>AM</u> ____ <u>P.M.</u>	40
Listing Licensee	_____	Selling Licensee	_____	41
Listing Firm Broker Initials/Date	_____	Selling Firm Broker Initials/Date	_____	42

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